

REMARKS

Claims 1-9, 11 and 19-20 remain in this application. Claims 10 and 12-18 have been canceled. Claims 1-9 and 11 have been amended. Claims 19-20 have been added. By these amendments, no new matter has been added.

The Examiner rejected Claims 1-13 under 35 U.S.C. § 112, second paragraph, as being indefinite. These rejections are respectfully traversed. The Examiner argued that the phrase "counting the at least one of the requests" in Claim 1 does not make grammatical sense. Claim 1 has been amended so that the quoted phrase is no longer present, and is deemed sufficiently definite. These rejections should therefore be withdrawn.

Before addressing the rejections to the claims based on the prior art, certain novel aspects and benefits of the invention are discussed below. The invention provides a novel method of transacting using network traffic as a direct medium of exchange. As acknowledged in the specification, the desirability of traffic is understood in the art, and various methods are known for increasing traffic to a Web site, such as banner ads containing a hyperlink to the Web site, or the distribution of other advertising, including printed advertising, with URL or other link information. Such methods should not be confused, however, with methods for using traffic as a medium of exchange, which the prior art completely fails to disclose or suggest.

Anything may be exchanged for traffic according to the invention, but the invention is expected to be especially useful when applied to the exchange of network resources for traffic. To be sure, Applicant does not claim to have invented the age-old concept of barter, but instead has invented a specific, computer-implemented method for a barter transaction, using traffic as a medium of exchange. In an embodiment of the invention, traffic is exchanged for a network resource that is interoperable with a wide area network and comprises computer hardware or software. Examples of network resources include routers, servers, client computers, operating software,

application software, including but not limited to "applets," programming languages or scripts, and copyrighted content desired by a user. Such resources may conveniently be configured to communicate information used in the performance of the method, thereby expediting the underlying barter transaction.

The network resource is configured to originate user requests for information that comprise a redirection code. As defined by Claim 1, a redirection code comprises sufficient information to determine a traffic generator to be credited for the traffic. Using the redirection code, a specific traffic generator account is credited based on the volume of traffic with the redirection code. Meanwhile, the account is debited based on use of the network resource, completing the accounting for the barter transaction. Advantageously, traffic that includes a redirection code can be selectively directed to any information (e.g., web page or advertisement) specified by the sponsor for the network resource, which the sponsor may change whenever desired.

Thus, the invention provides a versatile method for directly exchanging network traffic for network resources, that overcomes the limitations of the prior art. These limitations include, for example, the lack of a traffic generator account that is credited for traffic originating from a network resource and debited depending on use of the network resource by network users. The specific deficiencies of the cited reference are discussed below.

The Examiner rejected Claims 1-13 under 35 U.S.C. § 102(b), and in the alternative, under 35 U.S.C. § 103(a), over Hoyt. These rejections are respectfully traversed. Hoyt presents no bar to patentability of the invention.

Hoyt merely discloses placing personalized information on a Web site, and/or printing the Web site address on personal photographs, as a way to increase traffic to the Web site. (2:44-49.) Personal photographs are obtained using "public media transmission devices placed in commercial locations." (2:49-51.) The "public media transmission devices" are essentially conventional photo-kiosks with a digital imaging capability, that are connected to the Internet. (2:54-65; 4:3-60; 6:46-50.) To encourage

traffic to a particular Web site, Hoyt discloses providing "a hard copy of an image of the user and text information directed to a messaging site, where traffic is to be increased." (2:62-65.) Hoyt also discloses uploading digital images and other user data to a server. (8:31-50.) In other words, Hoyt discloses attracting users to a Web site by printing a URL or like advertising on a user photograph from a kiosk, and/or by storing the user photographs at a Web site.

In paragraph six of the Office Action, the Examiner argues that Hoyt discloses the elements of Claim 1. Applicant respectfully disagrees. Hoyt fails to disclose or to suggest numerous elements of the invention as defined by Claim 1, as explained below.

With respect to Claim 1, Hoyt fails to disclose or to suggest "debiting a traffic generator account a debit amount related to the state information" and crediting the account an amount determined "based on a measure of traffic volume with the redirection code," as defined by Claim 1. Hoyt fails to disclose any maintenance of any account, much less one that is debited and credited as defined by Claim 1. The payment of money at a kiosk in exchange for a user photograph does not disclose this element. At most, Hoyt merely suggests printing a photograph after a user has paid money, a process that does not even require a conventional user payment account.

Hoyt fails to disclose or suggest determining a credit amount based on a measure of traffic volume with a redirection code. Similarly, Hoyt fails to disclose or to suggest crediting any account – whether of the individual user or of a kiosk operator – an amount based on the determined credit amount, as defined by Claim 1. As regards measuring traffic volume with redirection codes, Hoyt merely discloses the well-known practice of counting all Web site hits, an entirely different step that makes no distinction between measuring traffic with or without a redirection code. Counting all hits on a Web site is not the same as, and does not make obvious, the step of determining a credit amount for a traffic generator account, based on a volume of traffic with the redirection code. For example, a count of all traffic to a Web site cannot be used to credit a traffic generator account as defined by Claim 1, unless all of the traffic comprises a redirection

code designating the traffic generator account. But Hoyt discloses that the traffic originates from individual users, without any user account being maintained. Even more so, Hoyt fails to disclose or suggest measuring traffic volume designating a particular account, and determining a user credit based on any such measure. Thus, Hoyt fails to disclose or suggest any step of crediting any traffic generator account based on a measure of traffic volume with redirection codes, or any use of a redirection code that designates an account.

Hoyt further fails to disclose or to suggest communicating with a network resource associated with the same account as designated by a redirection code. Plainly, the printed photograph used in Hoyt is not a network resource, and is not communicated with. A server storing photographs may qualify as a network resource, but Hoyt fails to disclose or to suggest an association between such server and a traffic generator account, that is credited based on traffic volume originating from the server. In contradistinction, Hoyt merely discloses measuring traffic volume to the server, without any associated redirection code designating an account. Likewise, a network-interoperable photo kiosk may qualify as a network resource, but Hoyt fails to disclose or suggest any measurement of traffic volume as originating from a kiosk. The kiosk merely prints a URL on a photograph, and if someone later decides to initiate a request using the printed URL, she does so without any further use of the kiosk. But Claim 1 defines the network resource as the originator of traffic with the redirection code designating an account, and there is no network resource in Hoyt with this characteristic. Thus, Hoyt also fails to disclose or to suggest the element of communicating with the network resource as defined by Claim 1.

As shown above, Hoyt fails to disclose or to suggest numerous steps – indeed, every single step – defined by Claim 1. In addition, Hoyt fails to disclose or suggest any method for completing a barter transaction using traffic as a medium of exchange, and even fails to recognize the possibility for such an exchange. Clearly, Hoyt poses no bar to patentability of this claim, which should therefore be allowed.

Dependent Claims 2-9, 11 and 19-20 contain numerous additional elements that are not disclosed by Hoyt, and are therefore independently allowable. The Examiner did not specifically identify any elements of the dependent claims as anticipated or made obvious by Hoyt. Thus, the Examiner has not set forth an adequate *prima facie* basis for rejecting the dependent claims, which should therefore be allowed. In addition, each of the dependent claims is also allowable as depending from an allowable base claim.

In view of the foregoing, the Applicant respectfully submits that Claims 1-9, 11 and 19-20 are in condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested, and a timely Notice of Allowability is solicited.

The Examiner has set forth numerous dictionary definitions for certain claim terms in paragraph nine of the Office Action. Applicant is not opposed to consulting dictionaries as part of claim construction, but notes that different dictionaries often provide different or even conflicting definitions for the same word. Another shortcoming with dictionaries is that most words are identified as having several different meanings depending on context. Dictionaries do not provide guidance as to the most applicable context for the word as used in a claim. As the Examiner has not indicated any particular definition as germane to any particular issue, there is no need to adopt or to contest any particular dictionary definition set forth in the Office Action, and Applicant does neither. Except for terms expressly defined in the application or file history, terms should be interpreted according to their ordinary and accustomed meaning to one of ordinary skill in the art. The specification may show a general context for certain claim terms, although claims are not to be limited by the preferred embodiment.

If it would be helpful to placing this application in condition for allowance, the Applicant encourages the Examiner to contact the undersigned counsel and conduct a telephonic interview.

Serial No. 09/837,719
April 21, 2004
Page 10

To the extent necessary, Applicant petitions the Commissioner for a one-month extension of time, extending to April 29, 2004, the period for response to the Office Action dated December 29, 2003. The Commissioner is authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0639.

Respectfully submitted,



Date: April 21, 2004

Brian M. Berliner
Attorney for Applicant
Registration No. 34,549

O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90071-2899
Telephone: (213) 430-6000